The Writers' Guild of Great Britain
The Personal Managers' Association
Mercury Musical Developments

MUSICAL THEATRE AGREEMENTS

GUIDELINES and NOTES

APPENDICES

Appendix (a) - 2

Notes on Model Collaboration Agreement

DISCLAIMER

The information and materials contained in these Guidelines and accompanying documents are intended as a general guide only. Nothing in these pages constitutes specific advice and the WGGB/PMA/MMD do not accept any responsibility for any loss which may arise from reliance on such information/materials. No guarantee is given as to the accuracy and/or completeness of the information/materials contained in these pages and the WGGB/PMA/MMD do not warrant that these Guidelines or their contents or the website on which they appear or any hypertext links are virus free or uncontaminated. The WGGB/PMA/MMD advise that you should, where appropriate, always seek expert professional advice from the WGGB or agent member of the PMA or solicitor.

These Notes should be read in conjunction with the Model Collaboration Agreement in Appendix (a) - 1

NOTES ON MODEL COLLABORATION AGREEMENT

A Collaboration Agreement would normally be drawn up between the writers wishing to contribute to a piece of musical theatre. It is most commonly used when the writing is speculative rather than being commissioned and in theory should be in place before the collaboration begins (although in practice this is not always the case). It could however be useful for a commissioned musical when the producer does not control all of the rights. The terms of any collaboration agreement may have to be subject to the terms of any agreement between the producer and the writers.

On the attached model agreement, square brackets denote an optional clause or phrase as appropriate.

The following notes have been designed to clarify any variations that might occur or encourage the potential collaborators to think carefully about how they might wish to deal with a given situation that differs from that envisaged by the document.

CONTRACTING PARTIES

It might be the case that one party is contributing to more than one area, say music and lyrics, or book and lyrics. Also there may be more than one individual providing any one of the elements. It is important that their responsibilities are clearly stated in the contract so that when the shares of income from the exploitation of the various elements are defined, they accurately reflect each individual's contribution.

CLAUSE 1(b): WARRANTY

Please note well that if it is intended to adapt an existing work to create the musical play, such as a novel or a film, then it is incumbent upon the collaborators to check whether such work (usually called the Underlying Property) is still in copyright. If it is, then they must apply for permission to make the adaptation. **It is strongly advised not to embark on any adaptation without having first obtained the necessary rights**. Obtaining permission can be a lengthy process especially if the author is deceased and the rights are controlled by an estate or trust or a film company. The collaborators should also be clear as to which of them is responsible for this research and who will pay for any options that are relevant, unless they are being commissioned by a producer, who would normally take care of the underlying rights.

Clause 3: COLLABORATION/DEVELOPMENT PERIOD

The length of the Collaboration Period will be dictated by the writers' own assessment of how long it will take to work on the piece depending on their other commitments, speed of writing etc etc. This period can of course be subsequently extended by mutual agreement (although there should always be a specific cut-off date in the event of any extension).

The length of the Development Period should take account of the time taken by producers to assess material, for workshops to be set up and rehearsed, for producers then to make decisions about whether they wish to commit to a full production. This could be anything from 2 – 5 years.

Clause 4: AGENCY

It may be the case that more than one of the contributors has an agent, in which case the choice of who acts for the musical will have to be by mutual agreement, or it may be that several agents work together on it. In this case the writers need to be clear as to what commission is being charged to whom. Also if any of the writers already has a contract with a music publisher this will need to be taken into account in the context of an agent representing the work, as the music publisher may already control certain rights.

Clauses 5,6, and 7: GRAND RIGHTS, SMALL RIGHTS, PUBLICATION

Grand Rights
Performances of dramatico-musical works whose music is specially written for them, namely: opera, operetta, musical play, revue, pantomime.

Small Rights
Small rights are all those other rights which are not classed as Grand Rights.

The divisions envisaged here apply when there is only one individual writing book, music and lyrics respectively, but can be varied to apply to any situation with more or fewer contributors but the total share for each element should remain constant. In the context of foreign language exploitation a translator's share should not be more than 30% of the total advances/royalties available in respect of book and lyrics.

Clause 8: CONSENTS - VOTING

Whilst this clause might seem rather dull and theoretical, it is important to decide whether or not unanimity is essential for decision-making. Once you are in a production situation and important creative decisions are required it is all the more important to be clear about the process by which you arrive at them.

Clause 9: TEXTUAL ALTERATIONS AND OMISSIONS

Once again it is important for the collaborators to be clear between themselves how they agree any changes which they make to the musical. This is most relevant once you are in a development or production situation and changes are being requested by third parties.

Clause 10: MUSICAL APPROVALS

This is similar to Clauses 8 and 9 and specifically applies to approvals of personnel engaged for a production. You might also want to add for completeness' sake how decisions are made about choice of director, choreographer, etc.

Clause 13: REJECTION OF A COLLABORATOR

This deals with the process by which one or more of the collaborators can be dropped from the project. Once again this is only a suggested structure and you may wish to put in alternative terms. Be aware here also of the implications that having an underlying property might have on the ability of a rejected collaborator to use their material elsewhere. You would need to agree very specifically what happens in that eventuality.

Clause 14: TERMINATION

Beware the implications of an underlying property on the provisions of this clause.

Clause 15: CREDIT

The credits obviously need to be varied according to who has written what. The book credit almost always comes first whether the same writer has written the lyrics or not. So you might have Book and Lyrics by X, followed by Music by Y or Book by X, Music and Lyrics by Y etc etc.

DEATH/DISABILITY

Whilst it may seem unpalatable to think about such gloomy subjects, it is worth bearing in mind how you might deal with the possibility of one of the collaborators dropping out due to severe illness, disability or indeed death. You will need to think about the extent to which the remaining collaborators wish to be able to include the ailing collaborator (or their successors in the case of a death) in future decisions about the work. Also issues relating to billing and share of income will come into play if you need to replace the ailing collaborator.

Here follows a sample clause which might be used for reference:

> In the event of the death of any of the parties [or significant disability which makes practical future participation by such party impossible] during the term of this agreement, then the remaining parties shall have the sole right to change the Musical Play (including, without limitation, those elements of it created by the deceased [or by the disabled party) or to select others in accordance with clause 8 to make such changes, and to negotiate and contract with regard to the Musical

Play, and all agreements with respect to the Musical Play shall require the signatures of the surviving parties, but shall not require the signature of the successor in title or legal representatives of the deceased party [or of the disabled party]. Notwithstanding the foregoing, the surviving parties shall not change or otherwise decrease the compensation due to such deceased [or disabled] person under this agreement, or the billing accorded to them, without the prior written consent of such deceased party's successor in title or legal representative. The surviving parties shall cause to be paid to the successor in title or legal representatives of the deceased [or disabled] all amounts provided for in this agreement, and shall furnish copies of all agreements or other documents pertaining to such exploitation of the Musical Play to the successor in title or legal representative of the deceased. In the event that all parties to this agreement are deceased [or disabled], all transactions with respect to the Musical Play may be entered into by the legal representatives or successors in title of the parties to this agreement to the same extent and as though they were the parties to this agreement.

MERGERS

Essentially a merger of rights entails all of the rights in the musical being fused in one entity so that the constituent parts cannot ever be separated (excluding publishing rights, and small performing rights). The merger is likely to include the producer in the ownership of the rights. It also means that the musical can only ever be performed in the form that it took at the point of merger, unless all parties agree to a change. A merger of rights enables a producer to exercise greater control over the exploitation of the work and is far more appropriate to the US where there is a much larger market for secondary exploitation and producers are eligible to participate in the rights from secondary exploitation for longer periods than in the UK. We would advise that a merger is not really to be recommended. In the event that you wish to include provision for it however, the following clauses might be useful.

1. As between the persons constituting the Writers, it is agreed that all rights of every kind and nature in the Musical Play shall be merged for all purposes upon the soonest of the following to occur: [NOTE: PICK ONE OR TWO AND STRIKE OUT THE REMAINDER]

    i. First paid performance of a first-class production in the West End of London.
    ii. First paid performance of a production in a regional theatre.
    iii. ---------- number of performances in a fringe/showcase production.
    iv. ---------- of performances of a workshop.

2. Until said merger takes place or if it does not, or if this agreement otherwise terminates, each of the parties to this agreement hereby represents and warrants to each other party that such party shall not exploit or grant or allow to be assigned to any third party any rights (other than rights to payment) whatsoever in the music, lyrics or book without the prior written consent of the other parties. No merger shall apply to the music or lyrics or portions of the book which have been deleted from the Musical Play prior to the merger of the Musical Play. Such deleted material shall be controlled by and belong exclusively to the Bookwriter, Composer and/or Lyricist respectively, as the case may be, free and clear of rights of the other parties to this agreement or others claiming through them.

(This clause would need some amendment in the case of a musical based on underlying property especially if the underlying property is in copyright. See note on Clause 1(b).)